



FACT SHEET

WETLANDS #3

Office of Technical and Customer Assistance / Spring 2000

EXEMPT ACTIVITIES FOR MUNICIPALITIES AND UTILITY COMPANIES

WHAT ARE EXEMPT ACTIVITIES?

“Exempt activities” are minor projects that DEM has determined have little or no impact on freshwater wetlands, and therefore may be completed without obtaining a wetlands permit. *Rule 6.00 of the Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* lists specific exempt activities as well as conditions and restrictions related to those activities. To fully qualify as an exempt activity, a project must be conducted in accordance with all the general conditions described in *Rule 6.01*, as well as all the specific conditions and restrictions described throughout the *Rule*. No part of *Rule 6.00* reduces DEM’s jurisdiction over wetlands nor does it does not imply exemption from other state, local, or federal permits.

As a municipality or utility company planning repairs or maintenance to property in or near a freshwater wetland, you should consider whether or not the activity qualifies as exempt. You should carefully read all the general and specific conditions and restrictions in *Rule 6.00*. If there is a question as to whether or not you may need a permit, DEM can give you general guidance. If your situation is unclear, you may have to file a *Request for Preliminary Determination* application for an official response from DEM about whether your project is indeed exempt. Some common exempt activities that a municipality or utility company may be considering are described below.

CAN EXISTING DRAINAGE SYSTEMS BE REPLACED OR MAINTAINED?

Replacement of functional drainage structures is an exempt activity that can be completed without a wetlands permit under certain conditions (*Rule 6.03B*). “Existing” culverts that are greater than 50 feet in length can be replaced with a culvert of the same type, size, capacity, and invert elevation as the original culvert. Culverts less than 50 feet long can be lengthened by no more than 5 feet on each end, if the same slope, cross-sectional area, and invert elevation are maintained. The work must not result in sedimentation, filling or impounding of any wetland. If erosion problems appear likely, a riprap pad no greater than 10 feet in length may be placed at the culvert outlet, as long as this will not prevent fish and wildlife passage. Normal maintenance and cleaning of drainage structures such as pipes, culverts, catch basins, and manholes are also considered exempt activities, providing that all of the conditions of *Rules 6.01* and *6.03D* are satisfied.

One common source of confusion when dealing with exempt activities is the meaning of the word “existing.” For a culvert to be considered “existing” if it happens to be in wetlands, it must have been in place in July 1971, or if was constructed after July 1971, you must have received a wetland permit

WHAT ABOUT ROAD MAINTENANCE OR REPAVING?

Normal maintenance and repaving of public or private roads or bikeways are exempt activities per *Rule 6.03E*. According to the *Rule* normal maintenance includes resurfacing or in-place recycling of paved surfaces; repairs or replacements of curbs, berms, sidewalks or guardrails; addition of guardrails, signs, or signals; repair or replacement of manholes, catch basins or grates; or adjustment of these structures to grade. Paving an existing oiled or dirt road, however, is **not** exempt and requires a permit.

ARE THERE SPECIAL EXEMPTIONS FOR REPAIR OR MAINTENANCE OF UTILITIES?

Yes, certain repairs and maintenance of utilities are exempt and can be completed without a wetlands permit in accordance with *Rules 6.01* and *6.03*. Clearing of a right-of-way in a wetland in order to access “existing” utility lines, poles, or other equipment for

maintenance or inspection is exempt if the right-of-way is not otherwise modified. Repair and maintenance of “existing” utility poles, structures, equipment, and underground lines or pipes that provide service to the public are exempt. Under certain circumstances utility poles can be replaced with poles of a different size, and utility lines associated with “existing” bridges, roads or railways can be repaired or replaced without a wetlands permit (*Rules 6.03P and 6.03Q*).

HOW DOES DEM HANDLE EMERGENCY SITUATIONS?

Emergency utility repairs that result from storm damage, vandalism, or equipment failure, are exempt under *Rule 6.07*, however, wetlands must be restored and grades stabilized upon completion of the activity. Water withdrawal from a pond or river for fighting fires is also an exempt activity, if other water sources are inaccessible or unavailable.

DEM may grant verbal approval of other emergency alterations that a municipality or utility company may need to undertake. A verbal or written request for approval must be made to the DEM Freshwater Wetlands Program by an official who is responsible for correcting the emergency. Please refer to *Rule 9.01* for requirements of the emergency approval process.

CAN MODIFICATIONS BE MADE TO TOWN BUILDINGS WITHOUT A PERMIT?

Some minor changes can be made to non-residential buildings and property accessories without a permit, provided all construction work is limited to “existing” cleared areas, is located outside floodplains, is no closer than 25 feet from any pond, marsh, swamp, or wetlands complex, and is at least 50 feet from a flowing waterbody or bog (see *Rule 6.06*). In addition, no artificial lighting, such as floodlights, should be faced toward wetland areas.

Under the fore mentioned conditions, a one story vertical addition may be built provided there is no change in the building footprint. If you wish to add a storage cooler, a dumpster, an equipment shed or a garage, be aware only one per lot is allowed. Each can be no larger than 600 square feet in footprint. Any alteration to an approved septic system (ISDS) must be in accordance with DEM’s ISDS Rules and Regulations.

Demolition of buildings, parking areas or property accessories is also exempt according to *Rule 6.04* provided the structure will not be rebuilt and the demolition material is disposed of properly outside of wetlands. All pre-demolition grades must be restored and disturbed soils must be stabilized, loamed and seeded.

CAN DAMS, BRIDGES, AND OTHER STRUCTURES BE MAINTAINED WITHOUT A PERMIT?

Yes, cutting of vegetation for dam safety completed in accordance with the DEM Dams Safety Program is an exempt activity (*Rule 6.02E*). When a water control structure associated with a dam needs inspection, maintenance or repair, the Department must receive written notification 10 days prior to initiation of the work (*Rule 6.03J*) explaining the purpose of the activity and the estimated time for completion. The water surface elevation should only be lowered when it is necessary to complete the activity, and temporary cofferdams should be used where possible.

Bridge repair is exempt if work is conducted from the deck of the bridge or roadway, if no equipment is placed in any watercourse or wetland, and if material removed from the site is disposed of properly. Maintenance, repair or in-kind replacement of stream crossings, docks, footbridges, boat ramps, beaches, or shoreline stabilization structures are also exempt provided the structures are not enlarged or expanded. Please refer to *Rule 6.03* for more detail.

CAN DRINKING WATER IMPOUNDMENTS BE MAINTAINED WITHOUT A PERMIT?

When a municipality must perform maintenance to a drinking water impoundment, 20 days advance written notice must be made to DEM’s Freshwater Wetlands Program. The maintenance must limited to within the existing boundary perimeters of the impoundment.

HOW CAN I OBTAIN A COPY OF DEM'S WETLANDS RULES AND REGULATIONS?

A complete copy of the DEM’s wetland *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act* can be obtained from the DEM’s Office of Technical and Customer Assistance located at the Foundry Office Complex at 235 Promenade Street, Providence (401-222-6800). They may also be found on DEM’s website at <http://www.state.ri.us/dem>.

Disclaimer: This Fact Sheet is for general information purposes only and is not meant to be a substitute for the Freshwater Wetlands Act or the *Rules and Regulations Governing the Administration and Enforcement of the Freshwater Wetlands Act*.